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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/566,577

05/31/2006

Louis Briard

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YOUNG & THOMPSON  
209 Madison Street  
Suite 500  
ALEXANDRIA, VA 22314

EXAMINER

WISTERMAYER, ALEXIS M

ART UNIT

PAPER NUMBER

3733

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/566,577	<b>Applicant(s)</b> BRIARD ET AL.	
	<b>Examiner</b> Alexis M. Wistermayer	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 3-7, 12, 14, 15 and 17-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 8-10, 13, 16 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

The specification is objected to because of the following informalities:

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 8-11, 13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Overes (US PGPub 2002/0156480) in view of Kinnett (US Pat 6852115).

Regarding Claims 1 and 13: Overes et al. disclose: a device/spreader apparatus comprising: at least one femoral insert/support plate having a condyle support surface (Figure 1 Element 3), a tibial insert/support plate (Figure 1 Element 2), and a means for applying a distraction force (Figure 1, adjustment mechanism 10).

Overes et al. disclose the claimed invention except for sliding means comprising juxtaposed rollers.

Kinnett discloses juxtaposed rollers/roller bearings (Fig 1 Element 20, Col 5 Lines 65-67 and Col 6 Lines 1-30), wherein juxtaposed is interpreted as placed near together. Although Kinnett does not explicitly say that the roller bearings provide a sliding means, they do expand and contract, facilitating the sliding of the implant into place.

Regarding Claim 8: Overes et al. disclose a device/spreader apparatus wherein a femoral insert/support plate and tibial insert/support plate are provided for each inner and outer compartment of the knee joint (Figure 1 Elements 2 and 3).

Regarding Claims 9 and 10: Overes et al. disclose a device/spreader apparatus comprising a means for measuring the spacing of the condyle support surfaces and a means for measuring the distraction forces between the femoral and tibial inserts/support plates (Paragraph 24).

Regarding Claim 11: Overes et al. teach a means for applying the distraction force comprising a force generation unit/adjustment mechanism (Figure 1 Element 10) and one branch connecting the generation unit/adjustment mechanism to the inserts (area indicated by Element 17 in Figure 1).

Overes et al. does not teach a pair of branches which connect the generation unit to the femoral and tibial inserts/support plates. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include two branches instead of one. The motivation would have been to offer an equivalent and alternative means of connecting the units. Official Notice is taken that mere duplication of parts has no patentable significance unless a new and unexpected result is produced. Please see MPEP § 2144.04 Section VI B.

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Regarding Claim 20: Overes et al. disclose the claimed invention except for a maximum thickness of each femoral insert and tibial insert being less than or equal to 2.5 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the thickness of Overes et al.'s inserts to be less than or equal to 2.5 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 2 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Overes (US PGPub 2002/0156480) in view of Kinnett (US Pat 6852115) as applied to Claim 1 above, further in view of Martini (US Pat 6558392).

Regarding Claim 2: Overes et al. and Kinnett disclose the claimed device as stated in the rejections above.

Overes et al. and Kinnett do not disclose a condyle support surface in the form of a dish.

Martini teaches a device having a dish/receptacle (Figure 1 Element 20). Overes et al. and Martini are analogous art because they are from the same field of endeavor of distraction devices. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use Martini's dish in Overes et al. and Kinnett's device. The

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motivation would have been to offer an alternative and equivalent means of matching the shape of the knee joint, thereby seating it more easily, in order to distract it.

Regarding Claim 16: Overes et al. and Kinnett disclose the claimed device as stated in the rejections above.

Overes et al. and Kinnett do not disclose a support surface that is substantially cylindrical, having an axis substantially transverse relative to the direction of distraction.

Martini discloses a support surface that is substantially cylindrical (Fig 2 Element 20, wherein the hemispherically shaped dish is also substantially cylindrical) having an axis substantially transverse to the direction of distraction (Fig 2 Element 20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the cylindrically shaped support surface of Martini in the combination of Overes et al. and Kinnett's device to offer an equivalent means of duplicating the natural joint anatomy when performing a distraction.

### ***Conclusion***

The prior art made of record and relied upon is considered pertinent to the applicant's disclosure. See PTO-892 for art cited of interest.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexis M. Wistermayer whose telephone number is 571-270-3304. The examiner can normally be reached on Monday - Friday 8 am - 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. M. W./  
Examiner, Art Unit 3733

/Eduardo C. Robert/  
Supervisory Patent Examiner, Art Unit 3733